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In the Supreme Court of the United States

OCTOBER TERM 1958

No. — 609

STANDARD AMERICAN LIFE, A CORPORATION
Petitioner

vs.

CYRIL C. SHEEHAN, COMMISSIONER OF INSURANCE
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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VS.

CYRIL C. SHEEHAN, COMMISSIONER OF INSURANCE
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Minnesota entered in the above entitled case on October 31, 1958.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Minnesota has not yet been reported. A copy of the opinion is attached hereto as Appendix A.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was pronounced on October 31, 1958 and a Petition for Re-hearing was denied on November 21,

1958. On November 26, 1958 further proceedings in the above case were stayed by the Supreme Court of the State of Minnesota pending the Petition for Certiorari herein.

The jurisdiction of this court is invoked under *28 U. S. C. A.*, Section 1257 (3).

Under date of November 21, 1958, a mandate by the Supreme Court of the State of Minnesota and the decision of the Supreme Court of the State of Minnesota made and filed herein on October 31, 1958 was made final and the aforesaid mandate was transmitted to the Clerk of the District Court, Hennepin County, Minnesota, and was filed therein on November 24, 1958, such mandate constituting final judgment herein.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution.

QUESTIONS PRESENTED

I.

Was the Due Process Clause of the Fourteenth Amendment, U. S. Constitution violated where State District Court was restrained by Writ of Prohibition issued by State Supreme Court from holding hearing at which petitioner sought to establish that if Insurance Commissioner conducted cease and desist hearing, petitioner would be irreparably damaged without adequate remedy at law.

II.

Where notice of cease and desist hearing issued by a State Insurance Commissioner against insurance company

did not specify charges or advise of true nature of hearing, was the Due Process Clause, Fourteenth Amendment, U. S. Constitution violated.

STATEMENT OF CASE

I.

Procedural history of the case.

Under date of May 12, 1958, Cyril C. Sheehan, Commissioner of Insurance of the State of Minnesota (hereafter referred to as "Commissioner"), wrote to petitioner stating in substance that it was his opinion that petitioner had been engaged in and was presently engaged in an unfair method of competition and stated that pursuant to *Minnesota Statutes*, Section 72.28, a hearing was to be held on June 3, 1958, at which time petitioner was to show cause why an order should not be made by said Commissioner requiring petitioner to cease and desist from such unfair practices. Further, that said abuses were in violation of *Minnesota Statutes*, Section 72.28, as set forth in Appendix B.

Thereafter, petitioner instituted an action in the District Court, Fourth Judicial District, Hennepin County, Minnesota, against the Commissioner, to permanently enjoin said Commissioner from holding any hearing on June 3, 1958, or any other date, alleging that petitioner did not have adequate notice of the issues to be heard at the purported hearing and that if a hearing was held, petitioner would be denied due process of law under the Fourteenth Amendment of the Constitution of the United States, and further alleging that if the hearing was held at any time, your petitioner would sustain irreparable harm for which it had no adequate remedy at law. The Com-

missioner had previously stated to petitioner without equivocation that upon the holding of such a hearing he, the Commissioner, would find that petitioner was engaged in unfair practices no matter what evidence petitioner would produce at the scheduled hearing.

The action in the District Court of Hennepin County was commenced on the 2nd day of June, 1958 and a temporary restraining order was obtained from that court, restraining said Commissioner of Insurance from holding the scheduled hearing on June 3, 1958, and he was ordered to show cause why a temporary injunction should not issue commanding him and all persons acting under him to refrain from holding a hearing involving petitioner until final judgment herein. Said Order to Show Cause was set for hearing on June 9, 1958; this hearing was thereafter continued by consent of the parties because of conflicting schedules and no hearing has ever been held in the District Court of Minnesota with reference to petitioner's action against the Commissioner.

Thereafter and on July 11, 1958 in an ex parte proceeding initiated by the Commissioner, the Supreme Court of the State of Minnesota granted to the Commissioner an alternative Writ of Prohibition, which is the basis of the case involved in this petition. Said Writ of Prohibition prohibited the District Court of Hennepin County, Minnesota, Fourth Judicial District, and the Honorable Rolf E. Fosseen, Judge thereof, together with the petitioner herein, from holding any further proceedings in the aforesaid action then pending in the District Court, Hennepin County, Minnesota. Petitioner, by virtue of *Minnesota Statute* 587.02, is not permitted to make a return to the alternative Writ of Prohibition in the Supreme Court of the State of Minnesota. *Minnesota Statute* 587.

02, contained in Volume 2, Minnesota Statutes, page 4326 is as follows:

"587.02 Service and return of writ.

"Such writ shall be served upon the court and party or officer to whom it is directed in the same manner as a writ of mandamus; and a return to such writ shall be made by such court or officer, the making of which may be enforced by attachment."

Petitioner is allowed only to reject or adopt all, or a part of, the return of the judicial body involved in this case, namely, the Honorable Rolf Fosseen and the District Court of the State of Minnesota, in for the County of Hennepin, in the Fourth Judicial District. Petitioner did adopt part of said return and was also allowed to file a brief in support of the return of the Honorable Rolf Fosseen and in opposition to making the Writ of Prohibition absolute. Petitioner also requested the opportunity to present oral argument before the Supreme Court of the State of Minnesota concerning the Writ of Prohibition; this request was denied.

Thereafter, and on the 31st day of October, 1958, the Supreme Court of Minnesota made the Writ of Prohibition absolute, thereby restraining permanently any further proceedings in the action instituted by the petitioner against the Commissioner in the District Court of Hennepin County, Minnesota. Application for re-hearing by petitioner was denied by the Supreme Court of Minnesota in that matter on November 21, 1958. The present petition is based upon this decision, making the Writ of Prohibition absolute.

Immediately after the decision of the Supreme Court of Minnesota making the Writ of Prohibition absolute, the Commissioner scheduled a new hearing set for December 3, 1958.

Further proceedings, including the proposed hearing, were stayed by an order of the Supreme Court of the State of Minnesota under date of November 26, 1958 pending application by the petitioner herein for a Writ of Certiorari to the Supreme Court of the United States.

II.

Facts material to questions presented.

The Commissioner has repeatedly asserted in these proceedings that he has the unqualified right to set premium rates at which credit life insurance may be sold. He claims this right without any specific statutory authority and bases his claimed contention to set such rates upon the statutory authority granted to him to regulate unfair competition. Petitioner denies that the Commissioner has this rate regulatory power with reference to credit life.

By virtue of the granting of the alternative Writ of Prohibition, no hearing was held, nor was testimony or evidence allowed to be introduced in support of petitioner's action for a permanent injunction in the District Court of the State of Minnesota.

The Supreme Court of the State of Minnesota is an appellate court and has original jurisdiction in Writs of Prohibition. No hearing was held nor was evidence or testimony allowed to be introduced in that court by petitioner and petitioner could not make a return to controvert the petition for the Writ of Prohibition. The petitioner being only a nominal party and not being permitted to make a return, was not allowed to introduce evidence of any type in support of a request to quash the alternative Writ of Prohibition. Petitioner submitted a proposed return for itself asking that the same be considered by the Su-

preme Court of the State of Minnesota, but it is not known whether such was considered by the Supreme Court of Minnesota, for such, by Minnesota Statute, is not allowed, nor is it known whether the affidavits submitted by the petitioner in its request for a re-hearing in the Supreme Court of the State of Minnesota were considered by that court.

The statement of charges and the notice of hearing are as follows:

"May 12, 1958

Mr. P. P. Sonnen, President
Standard American Life
3801 West 50th Street
Minneapolis 10, Minnesota

Re: Credit Insurance
Statement of Charges and Notice of Hearing.

Dear Mr. Sonnen:

Under date of March 17, 1958, this Department forwarded to your company a bulletin dealing with the sale and solicitation of credit insurance in the State of Minnesota. This bulletin clearly set forth abuses existing in this field and pointed out that regulatory action was being promulgated. Such abuses were deemed to be in violation of Section 72.28 of the Minnesota Insurance Code dealing with the Unfair Trade Practices Act.

Several discussions were held in this office with Mr. R. P. Sonnen, Vice-President of your company. On April 29, 1958 a letter signed by him was received in this office stating that no corrective action would be taken effective July 1, 1958 as requested by this department. It is therefore my opinion that your company has engaged and is now engaging in this state in an unfair method of competition, because the excessive charges now being made by your company for this coverage are a direct result of the unfair

methods of competition as set forth in our March 17, 1958 bulletin and, that a proceeding in respect thereto would be to the public interest.

Pursuant to the authority vested in me under Section 72.28, you are hereby notified that a meeting is to be held in my offices, 570 State Office Building, St. Paul, Minnesota, on Tuesday, June 3, 1958, at 10:00 a.m., at which time you shall have an opportunity to be heard and show cause why an order should not be made by me requiring your company to cease and desist from the acts, methods and practices as above outlined. You are requested to reply to this order immediately.

Yours very truly,
Cyril C. Sheehan,
Commissioner of Insurance."

III.

Federal questions raised below in trial court and before the appellate court, the Supreme Court of the State of Minnesota.

A. In the trial court.

The original Complaint of the petitioner filed in the District Court of Minnesota, Fourth Judicial District, states in part as follows:

"VII.

That plaintiff has been informed by counsel above named that the charges as contained in Exhibits A and B are so vague and general in nature as to make the preparation and presentation of a case by plaintiff in defense thereof, virtually impossible. That in addition thereto its counsel has informed plaintiff that the limited time between their employment and the date of hearing is such that they cannot adequately prepare

the facts or the law in time for the scheduled hour and date of this hearing.

IX.

That the notice of hearing served by defendant upon plaintiff does not give plaintiff adequate notice of the issues to be heard nor sufficient time to prepare for the hearing. If the hearing is held on the date stated in the notice or at any time plaintiff will be denied due process of law under the Fourteenth Amendment to the Constitution of the United States and Section 7, Article 1 of the Constitution of Minnesota.

X.

That plaintiff has been engaged in the sale of insurance in the State of Minnesota since the year 1932 and has been engaged in the sale of credit life insurance since 1953.

That during the year 1957, plaintiff operated its credit life insurance business at a loss and plaintiff is of the opinion that a much greater loss would be sustained in the conduct of its credit life business if it is forced to sell its credit life insurance policies at the smaller premium rate demanded by defendant.

That plaintiff has invested large sums of money in the development of a sales force, sales literature, rates, schedules, etc., and that if it is precluded from continuing its sale of credit life as the result of said hearing, it will cause plaintiff irreparable damage for which plaintiff has no adequate remedy at law."

These issues were never passed upon by the trial court because the trial court was restrained from proceeding in the matter by virtue of the alternative Writ of Prohibition which was later made absolute. The issues raised in the paragraphs of the Complaint above cited, were never denied by the Commissioner inasmuch as he never submitted an Answer or pleaded in any manner in the trial court.

Petitioner, therefore, was never given an opportunity to prove any of the allegations contained in the Complaint nor was the trial court ever permitted to pass upon such issues.

B. Before the Supreme Court of the State of Minnesota.

By *Minnesota Statute* 587.02, the petitioner herein was not allowed to make a return to the alternative Writ of Prohibition sought by Commissioner in the Supreme Court of the State of Minnesota. The petitioner is allowed only to reject or to adopt all, or part of the return of the judicial body sought to be restrained by the Writ of Prohibition. Accordingly, petitioner could not raise the issues. The return of the respondent, the Honorable Rolf Fosseen, Judge of the District Court, whose actions were sought to be restrained, stated that the petitioner raised the question of due process but that he, as Judge, had no opinion concerning such issue because it was merely an allegation contained in the Complaint. Petitioner did attempt to raise the issue in the brief submitted in support of its contention that the Writ of Prohibition should be quashed, stating in the brief submitted to the Supreme Court of the State of Minnesota that the petitioner alleged in its Complaint that the notice of hearing given by the Commissioner to the petitioner was not adequate from the standpoint of time so as to enable it to prepare for the hearing and if the hearing was held, would be denied due process of law under the Fourteenth Amendment to the Constitution of the United States.

Petitioner also raised in its brief the fact that it would be uninformed of specific charges by reason of inadequacy of notice of charges, in the hearing sought to be held by

the Commissioner and would, therefore, be unable to produce evidence to refute the predetermined findings of the Commissioner, which would be a denial of due process of law guaranteed to petitioner in accordance with the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of the State of Minnesota, in its decision in this case, did not discuss the question of Due Process.

Petitioner also argued that it should be allowed to prove that it would sustain irreparable harm for which it had no adequate remedy at law based solely on the fact that the Commissioner would hold the proposed hearing.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted in the instant case because an important question under the Fourteenth Amendment affecting administrative hearings and the rights of a person charged is involved. Petitioner has never had the opportunity to be heard with reference to any of these issues and has been denied its "day in court".

By the applicable laws of the State of Minnesota, a person is entitled to injunctive protection against the actual or threatened acts of an administrative agency without exhausting the prescribed statutory remedy when the parties seeking injunctive protection can show that the pursuit and exhaustion of such administrative remedy will cause him imminent and irreparable harm. *Thomas v. Ramberg* (1953), 240 Minn. 1, 60 N. W. 2d 18. It is also the law in the State of Minnesota that if no such irreparable harm will be sustained by the person seeking the injunctive relief, his application for such injunctive relief will be dismissed. Petitioner instituted the action against the

Commissioner in the trial court of the State of Minnesota seeking such injunctive relief, and alleged irreparable harm and damage which would be sustained by the petitioner if the hearing was held. By the Writ of Prohibition granted by the Supreme Court of Minnesota, which is the proceeding to be reviewed here, petitioner was denied its opportunity to prove the fact of irreparable harm. The Supreme Court of the State of Minnesota held as a matter of *law that the petitioner would not sustain the irreparable* harm or damage if the Commissioner held the hearing. Such finding by the Minnesota Supreme Court was based solely upon the allegation contained in the Commissioner's application for the Writ of Prohibition in which he stated, paragraph XII:

> "That as a matter of law, the Standard American Life has sustained and will sustain no irreparable injury from the conduct of the proposed hearing."

With reference to this cited allegation, the Return of Fosseen, J., which is the only responsive pleading to the application for the Writ of Prohibition which petitioner could avail himself of, stated in substance, paragraph VIII of said Return, that he, the trial Judge, had no knowledge, opinion or belief as to the truth or falsity of the above cited allegations but if in fact they were issues in the District Court, then findings with respect thereto should be made and then only on competent evidence submitted on a proper hearing.

Petitioner is entitled to its day in court—is entitled to be heard on the fact questions of irreparable harm and damage. This right has been denied to petitioner by the Supreme Court of the State of Minnesota in making the Writ of Prohibition absolute and prohibiting any further proceedings in the matter.

The findings of the Supreme Court of the State of Minnesota with respect to irreparable harm have no foundation in fact. Petitioner was denied the right and the opportunity to controvert the allegation which was the basis of that finding. The right, under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, to a full hearing includes the right on the part of the party whose rights are sought to be affected, to introduce evidence. The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause. Petitioner here has been clearly denied the opportunity to be heard and the opportunity to defend. *Twining v. New Jersey* (1908), 211 U. S. 78, 29 Sup. Ct. 14, 53 L. Ed. 97; *Saunders v. Shaw* (1917), 244 U. S. 317, 37 Sup. Ct. 638, 61 L. Ed. 1163.

If the Commissioner is allowed to hold the hearing on the statement of charges, as purportedly specified in his letter of May 12, 1958, petitioner will be unable to prepare a defense because such statement of charges, if any, is so vague and non-specific, that such a hearing would be violative of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

It is apparent that petitioner has never had its "day in Court" in violation of due process and for the reasons stated it is respectfully submitted that the Writ of Certiorari should issue.

Respectfully submitted,

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APPENDIX A

No. Sp. Supreme Court Per Curiam.

Endorsed.

Filed October 31, 1958, Mae Sherman, Clerk, Minnesota Supreme Court.

State of Minnesota, ex rel. Cyril C. Sheehan, Commissioner of Insurance,

Relator,

37633 vs.

The District Court of the State of Minnesota, in and for the County of Hennepin, in the Fourth Judicial District and Honorable Rolf Fosseen, Judge thereof, and Standard American Life.

Respondents.

Syllabus

1. In order to justify the issuance of the writ of prohibition, it must appear: (1) That the court, officer, or person against whom the writ issues is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; and (3) that it will result in injury for which there is no other adequate remedy at law.

2. In the absence of another legal remedy which is reasonably efficient and adequate, the writ of prohibition may properly be issued in the discretion of the court to prevent an inferior tribunal from proceeding in a matter over which it is wholly without jurisdiction or in which it is exceeding its legitimate power and authority.

3. The rule has been long settled in this state that no one is entitled to injunctive protection against the actual or threatened acts of an administrative agency until the prescribed statutory remedy has been exhausted, unless the party seeking injunctive protection can show that the pursuit and exhaustion of such administrative remedy will cause imminent and irreparable harm as distinguished from merely speculative damages based on nothing more than an apprehension that the final outcome of the administrative proceedings will be prejudicial.

4. The mere fact that a plaintiff might be saved the time and expense of defending himself at an administrative proceeding would not be sufficient to justify equitable relief by means of injunction at the point it was sought in the instant case.

5. The relator in the role of state commissioner of insurance has been charged by statute with the obligation of proceeding in accordance with the provisions of M. S. A. 72.28 and related statutes to protect the public from unfair competition in the insurance business and from what might be termed deceptive acts and practices in that business. Subd. 2 of that statute provides when the district court shall acquire and take over jurisdiction.

6. Where a court is about to proceed in a matter over which it has no jurisdiction at a time when it is the duty of the administrative tribunal to proceed and act, a Writ of Prohibition will not be denied.

Writ of Prohibition made absolute.

Opinion

Per Curiam.

This proceeding involves an application to have a Writ of Prohibition issued out of this court made absolute.

This court has repeatedly said that three things are essential to justify the issuance of the writ. It must appear: (1) That the court, officer, or person against whom the writ issues is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; and (3) that it will result in injury for which there is no other adequate remedy at law.

The Writ of Prohibition is an extraordinary writ issued for the purpose of preventing inferior courts or tribunals or other individuals invested by law with judicial or quasi-judicial authority from going beyond their jurisdiction. The general nature and office of the writ is to furnish a preventive rather than a corrective remedy. The writ is not one of right but of discretion and issues only in extreme cases where the law affords no other adequate remedy by motion, trial, appeal, certiorari, or otherwise. In the absence of another legal remedy which is reasonably efficient and adequate, it may properly be issued in the discretion of the court to prevent an inferior tribunal from proceeding in a matter over which it is wholly without jurisdiction or in which it is exceeding its legitimate power and authority. The writ may issue to restrain an inferior court from exceeding its legitimate powers in a matter over which it has jurisdiction as well as to restrain it from proceeding in a matter over which it has no jurisdiction, and it may also issue to prevent an abuse of discretion, where there is no other adequate remedy at law. See, Weidel v. Plummer,

243 Minn. 476, 68 N. W. 2d 245; Craigmile v. Sorenson, 241 Minn. 222, 62 N. W. 2d 846; Bellows v. Erickson, 233 Minn. 320, 46 N. W. 2d 654; Nemo v. Local Joint Executive Board, 227 Minn. 263, 35 N. W. 2d 337, 811; State ex rel. Flodin v. District Court, 222 Minn. 546, 25 N. W. 2d 692; State ex rel. Roberts v. Hense, 135 Minn. 99, 160 N. W. 198; State ex rel. Hahn v. Young, 29 Minn. 474, 9 N. W. 737; Home Ins. Co. v. Flint, 13 Minn. 228 (244); 15 Dunnell, Dig. (3 ed.), §§ 7840, 7841.

The relator alleges that the district court is about to exercise judicial power; that a temporary restraining order has been granted by the Honorable John A. Weeks, one of the judges of the Hennepin County District Court, requiring relator to show cause why a temporary injunction should not issue; and that the court below is not authorized by law to grant an injunction restraining relator in a proceeding which the relator alleges is brought under M. S. A. 72.28 and related statutes §§ 72.20 through 72.35.

It is clear from a reading of § 72.28 that relator as commissioner of insurance of the State of Minnesota is charged with the obligation of regulating the conduct of persons engaged in the business of insurance so far as any method of competition or any act or practice in the conduct of that business is concerned which is not defined in § 72.23. If he has reason to believe that such competition is unfair or the practice of any person so engaged is unfair or deceptive, a proceeding may be brought if bringing it would be to the public interest. The statute authorizes the relator as insurance commissioner to conduct a hearing after notice thereof and after issuing and serving a statement of the charges. The commissioner is required to make a report after such hearing in which he shall state his findings and to serve a copy thereof upon the person

served with the statement of charges. If this report charges a violation of §§ 72.20 to 72.33, and if the methods of competition, acts, or practices complained of have not been discontinued, the commissioner may proceed through the office of the attorney general, at any time after 20 days have elapsed following the service of the report, and cause a petition to be filed in the district court within the district wherein the person against whom the charges were made resides to enjoin and restrain that person from further engaging in such practices.

Section 72.28, subd. 2, provides that upon the filing of such petition and transcript the court shall have jurisdiction of the proceedings and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or necessary in its judgment to prevent injury to the public pendente lite. It is thus made clear that when the relator has complied with the statute to the extent heretofore related, a duty which has been placed upon him in his capacity as insurance commissioner by legislative direction, the district court then acquires jurisdiction and thereafter has the power to make and enter appropriate orders and to issue such writs as are necessary to its jurisdiction or necessary in its judgment to prevent injury to the public. It is for the district court then to pass upon whether the acts or practices complained of have been unfair and deceptive and whether the proceeding by the commissioner with respect thereto is in the public's interest and to issue its orders accordingly. Section 72.28, subd. 3, provides that the findings of the commissioner shall be given the same effect as those of a referee appointed pursuant to § 546.36.

It is a long-settled rule in this state that no one is entitled to injunctive protection against the actual or threaten-

ed acts of an administrative agency until the prescribed statutory remedy has been exhausted unless the party seeking injunctive relief can show that the pursuit and exhaustion of such administrative remedy will cause imminent and irreparable harm as distinguished from merely speculative damages based on nothing more than an apprehension that the final outcome of the administrative proceedings will be prejudicial. Similar issues to those here involved were presented to the court in Thomas v. Ramberg, 240 Minn. 1, 60 N. W. 2d 18, in which decision this court applied the aforesaid rule and denied the moving party his application to enjoin defendants as commissioners of the Industrial Commission from taking further action in the matter of fixing minimum rates of pay for women and minors in the retail merchandising business. This court said (240 Minn. 5, 60 N. W. 2d 20):

> "* * * In other words, *absent a showing that plaintiff is faced with the actual or imminent peril of sustaining irreparable harm—that is, real and serious injury—if the pending administrative proceedings are continued to their final completion,* the sole allegation that the administrative agency has or is about to exceed its jurisdiction is not of itself sufficient to invoke injunctive relief to enable a court to examine forthwith the basis of the agency's jurisdiction. The right to invoke equity's aid is dependent upon a positive showing that a failure to grant injunctive relief will result in irreparable harm." (Cases cited.)

This court also stated (240 Minn. 6, 60 N. W. 2d 21):

> "Minnesota cases uniformly hold that administrative action *which has not reached a stage causing plaintiff irreparable injury* cannot be enjoined even though the anticipated decision of the administrative agency is questioned on constitutional grounds. Injunctive relief cannot be given for what is merely assumed to be a possible result." (Cases cited.)

The mere fact that a party might be saved the time and expense of defending himself at an administrative proceeding would not be sufficient to justify equitable relief by means of injunction at the point it was sought in the instant case. Costs expended in administrative hearings, even where the agency may be exceeding its jurisdiction, do not amount to irreparable injury justifying intervention by a court of equity. Thomas v. Ramberg, supra; Davis, Administrative Law, § 188.

We think it plain that the relator here is without an adequate remedy at law. As insurance commissioner he has been charged by statute with the obligation of proceeding in accordance with the provisions of § 72.28 and related statutes to protect the public from unfair competition in the insurance business and from what might be termed deceptive acts and practices in that business. Subd. 2 of that statute provides when the district court shall take over jurisdiction. It would not constitute an adequate remedy to say he has a remedy by appeal at that point in the proceedings. Such procedure would require undue and detrimental delay to be inflicted upon the public when the authority to proceed directly up to a certain point has been placed upon the commissioner as a duty and upon no one else. While it may be true that in a majority of situations an injured party has some mode of review or correction either by appeal, certiorari, or otherwise, nevertheless the existence of such a remedy is not always a ground for refusing the writ. State ex rel. Chesley v. Wilcox, 24 Minn. 143; State ex rel. Roberts v. Hense, *supra*; 15 Dunnell, Dig. (3 ed.) § 7842, and cases cited. Where a court threatens to proceed in a matter over which it has no jurisdiction at a time when it is the duty of the administrative tribunal to proceed and act, a writ of prohibition will not

be denied merely because there may be a remedy by appeal from the judgment. See, State ex rel. Minneapolis Threshing-Machine Co. v. District Court, 77 Minn. 302, 79 N. W. 960; State ex rel. Roberts v. Hense, *supra*; State ex rel. Minnesota Nat. Bank v. District Court, 195 Minn. 169, 262 N. W. 155; Bellows v. Ericson, *supra*.

It is apparent from the files in the within proceedings that the commissioner of insurance had reached the conclusion that respondent Standard American Life Insurance Company, engaged in the business of insurance in this state, was proceeding by a method of competition and acts and practices in the conduct of its business in violation of § 72.28 and its related provisions and that it had become his duty to notify said respondent to respond to the commissioner's notice and statement of charges. The temporary restraining order issued by the court below prevented relator from carrying out his administrative duties. The statute having made it plain that the exercise of such power by the court at the time was unauthorized, it becomes manifest that the remedy of appeal was and is plainly inadequate and the writ should not be denied.

It is obvious that as a matter of law the respondent insurance company will have ample opportunity to be heard and to seek to persuade the district court that the findings of the commissioner, whatever they may be, are not substantiated by the evidence and that he has exceeded the legal authority vested in him. It can hardly be said that under such circumstances this respondent will be faced with actual or imminent peril of sustaining irreparable harm, that is, real and serious injury, if the pending administrative proceedings are continued to their final completion, even though it may be required to incur expenses in attending the hearing and presenting evidence. As was held in

Thomas v. Ramberg, *supra*, the fact that said respondent may be required to do so is not in itself irreparable injury which gives a court jurisdiction to issue an injunction restraining the relator from proceeding.

For the reasons stated, the writ of prohibition issued herein is made absolute.

Relator is allowed his statutory costs.

APPENDIX B

"72.28 Unfair competition

"Subdivision 1. Statement of charges; service; hearing. Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaged in this state in any method of competition or in any act or practice in the conduct of that business which is not defined in section 72.23, that said method of competition is unfair or that said act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon that person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 72.25, and the provisions of that section as to service are made applicable to proceedings under this section. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. The commissioner shall, after the hearing, make a report in writing in which he shall state his findings as to the facts and shall serve a copy thereof upon the person upon whom he served his statement of charges.

"Subdivision 2. Application for injunction. If the report charges a violation of sections 72.20 to 72.33 and if the method of competition, act, or practice charged by him has not been discontinued, the commissioner may, through the attorney general, at any

time after 20 days after the service of the report, cause a petition to be filed in the district court within the district wherein the person against whom the charges were made resides, or that wherein he has his principal place of business, to enjoin and restrain that person from engaging in the method, act, or practice charged. A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings, shall be filed with the petition. Upon the filing of the petition and transcript the court shall have jurisdiction of the proceedings and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or necessary in its judgment to prevent injury to the public pendente lite.

"Subdivision 3. Order enjoining and restraining. If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair and deceptive, and that the proceeding by the commissioner with respect thereto is to the interests of the public, it shall issue its order enjoining and restraining the continuance of that method of competition, act or practice. The findings of the commissioner shall be given the same effect as those of a referee appointed pursuant to Minnesota Statutes, Section 546.36.

"Subdivision 4. Rehearing. If either party shall apply to the court before the entry of its order for leave to adduce additional evidence, and shall show to the satisfaction of the court that said additional evidence is material and that there were reasonable grounds for the failure to adduce it in the proceeding

before the commissioner, the court may order said additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings, by reason of the additional evidence so taken, and shall file those modified or new findings with the return of the additional evidence. Any such additional evidence and modified or new findings shall be considered by the court in making and entering its final order, together with the matters submitted in the original transcript. Laws 1947, c. 129, Section 9."

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JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM 1958

No. 609

STANDARD AMERICAN LIFE, A CORPORATION
Petitioner

vs.

CYRIL C. SHEEHAN, COMMISSIONER OF INSURANCE
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF IN OPPOSITION TO THE PETITION

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Minnesota has not yet been reported. A copy of the opinion is attached to petitioner's petition as Appendix A.

JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was pronounced on October 31, 1958, and a Petition for Re-hearing was denied on November 21, 1958. On November 26, 1958, further proceedings in the above

case were stayed by the Supreme Court of the State of Minnesota pending the Petition for Certiorari herein.

The jurisdiction of this court is invoked under *28 U. S. C. A.*, Section 1257 (3).

Under date of November 21, 1958, a mandate by the Supreme Court of the State of Minnesota and the decision of the Supreme Court of the State of Minnesota made and filed herein on October 31, 1958, was made final and the aforesaid mandate was transmitted to the Clerk of the District Court, Hennepin County, Minnesota, and was filed therein on November 24, 1958, such mandate constituting final judgment herein.

CONSTITUTIONAL PROVISIONS INVOLVED

It is claimed by petitioner that the Due Process Clause of the Fourteenth Amendment to the United States Constitution is involved.

QUESTIONS PRESENTED

I.

Will petitioner's constitutional rights, protected under the Due Process Clause of the Fourteenth Amendment, be violated where the State District Court was restrained by a Writ of Prohibition issued out of the State Supreme Court, in which the State Supreme Court determined as a matter of law that the petitioner would not suffer irreparable injury and therefore under state law was not entitled to equitable relief at that point in the administrative proceedings.

II.

Is petitioner entitled to equitable relief in the District Court after receiving notice of a hearing issued by the

State Insurance Commissioner pursuant to statute on the grounds that the notice did not adequately set out the specific charges or advise petitioner of the true nature of the hearing when the statute which provides for the administrative hearing provides that any enforcement of the Commissioner's findings pursuant to the hearing must be confirmed by the District Court which is empowered to issue appropriate orders enjoining and restraining the continuance of the unfair methods of competition if in the court's opinion petitioner is engaging in unfair trade practices.

III.

Has a state court decided in this case a federal question of substance not heretofore determined by the United States Supreme Court, or has it decided one in a way probably not in accord with applicable decisions of this court.

IV.

Was the petitioner's fear of injury *from the administrative proceeding* irreparable injury which would justify the assumption of equitable jurisdiction at this point in the proceeding?

STATEMENT OF CASE

After unsuccessful attempts on the part of the Commissioner of Insurance, respondent herein (hereinafter referred to as Commissioner) and the petitioner to work out an amicable settlement of their differences, the Commissioner on May 12, 1958, gave notice to the petitioner under the terms of *Minnesota Statutes*, Section 72.28, that a hearing was to be held on June 3, 1958. At that time petitioner

was directed to show cause why an order should not be made by the Commissioner requiring petitioner to cease and desist from certain acts, methods and practices, as outlined in the notice, which in the Commissioner's opinion constituted unfair competition and which he was required by law to prevent. (See Appendix B of petitioner's Petition for a Writ of Certiorari for relevant statutory language.)

Prior to the date of the scheduled hearing, petitioner instituted an action in the District Court, Fourth Judicial District, Hennepin County, Minnesota, for an injunction against the Commissioner which would prevent him from holding any hearing on June 3, 1958, or on any other date, claiming that the Commissioner was acting beyond his legal authority and that any proceedings pursuant thereto would irreparably harm the petitioner and that he had no adequate remedy at law. A temporary restraining order was issued out of the District Court, Fourth Judicial District, State of Minnesota, restraining the Commissioner from holding the scheduled hearing on June 3, 1958, and he was ordered to show cause why a temporary injunction should not issue commanding him and all persons acting under him to refrain from holding a hearing on this matter until final judgment in the court action. The Order to Show Cause was set for hearing on June 9, 1958, but by mutual consent of the parties this hearing was indefinitely postponed and was never held. The Commissioner was anxious to proceed with the hearing because in his opinion the people of the State of Minnesota were being irreparably harmed by the actions of the petitioner, which in the opinion of the Commissioner required him to call the hearing in question in order to carry out the obligations and duties placed on him by the statutes in question.

Because of the Commissioner's concern for the public interest he applied for and obtained an alternative Writ of Prohibition from the Supreme Court of the State of Minnesota, which Writ prohibited the District Court of Hennepin County, Minnesota, Fourth Judicial District, and the Honorable Rolf Fosseen, Judge thereof, together with the petitioner, from taking any further proceedings in the action in District Court, Hennepin County, Minnesota. The applicable statute, *Minnesota Statutes*, 587.02, contained in Volume 2, *Minnesota Statutes*, page 4326, and reading as follows:

> "Such writ shall be served upon the court and party or officer to whom it is directed in the same manner as a writ of mandamus; and a return to such writ shall be made by such court or officer, the making of which may be enforced by attachment."

requires the officer or party to whom it is directed to make a return to the Writ of Prohibition. The petitioner may either reject or adopt the return of the person authorized by law to make a return, in this case the Honorable Rolf Fosseen, Judge of the District Court of the State of Minnesota, Fourth Judicial District. The petitioner in this case adopted part of the return and filed a brief in support of the return of the Honorable Rolf Fosseen in opposition to the Writ of Prohibition.

The Supreme Court of Minnesota thereafter on the 31st day of October, 1958, made the Alternative Writ of Prohibition absolute, thereby permanently restraining any further action by the petitioner against the Commissioner in the District Court of Hennepin County, Minnesota. The Supreme Court denied petitioner's request for rehearing of the matter on November 21, 1958, and the Commissioner scheduled a new hearing for December 3, 1958. The Su-

preme Court, by the Honorable Roger Dell, issued an order under date of November 26, 1958, which stayed the proceedings pending an application by the Commissioner for a Writ of Certiorari to the Minnesota Supreme Court from the United States Supreme Court.

ARGUMENT

The petitioner herein invokes the jurisdiction of this court under *28 U. S. C.* 1257(3) apparently although not explicitly on the grounds that either this is a federal question of substance not heretofore determined by this court, or that this decision is in conflict with applicable decisions of this court. It would appear from an examination of the case law that this is not a question not heretofore determined by this court, so jurisdictional ground No. 1 must fail.

In connection with ground No. 2, a leading case in this field, that of the exhaustion of administrative remedies, is *Myers v. Bethlehem Shipbuilding Corporation*, 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638 (1938). In this case the N. L. R. B. issued a complaint against the *Shipbuilding Corporation* charging unfair labor practices. After the case had been set for hearing the company attempted to enjoin the holding of the hearing on the grounds that the board was exceeding its powers and that the hearing would cause irreparable damage not only by reason of the cost of the hearing and the loss of time, but also because of serious impairment of good will and harmonious relations existing between the corporation and its employees. The Supreme Court held that the District Court was without power to enjoin the board from holding its hearing. Among the court's reasons in the *Myers* case was "the long-settled rule

of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Petitioner's claim in this case is that it will be irreparably injured by adverse publicity both in regard to the general public and in regard to its agents selling insurance in the State of Minnesota.

In the case of *Petroleum Exploration, Inc. v. Public Service Commission*, 304 U. S. 209, 58 Sup. Ct. 834, 82 L. Ed. 1294 (1938), the company sought to enjoin the Kentucky Public Service Commission from investigating wholesale rates for gas marketed by the company in Kentucky on the grounds that the company did not fall within the jurisdiction of the commission, and that any investigation would deny due process and equal protection of the laws, and that it would violate the contract clauses of the federal and state constitutions. The company sought to enjoin the hearing on the grounds that the expense of furnishing the required evidence would be $25,000. The court held: "The necessity to expend for the investigation or to take the risk for non-compliance does not justify the injunction. It is not the sort of irreparable injury against which equity protects." The court relied upon the "abiding and fundamental principle" declared in the *Myers* case, *supra*, "that the expense and annoyance of litigation is 'part of the social burden of living under government'."

While petitioner here has never expressly argued that the cost of preparation was a justification for equitable relief, its argument that the adverse publicity would hurt it financially, is speculative and conjectural and should not be the ground for judicial intervention at this stage of administrative proceeding.

The law in Minnesota is clearly stated in the case of *Thomas v. Ramberg* (1953), 240 Minn. 1, 60 N. W. 2d

18. In this case the court stated that no person is entitled to injunctive relief against an administrative agency unless he can show that pursuit and exhaustion of such administrative remedy will cause him imminent and irreparable harm. The court said, 240 Minn. 5, 60 N. W. 20:

> "* * * In other words, *absent a showing that plaintiff is faced with the actual or imminent peril of sustaining irreparable harm—that is, real and serious injury—if the pending administrative proceedings are continued to their final completion, the sole allegation that the* administrative agency has or is about to exceed its jurisdiction is not of itself sufficient to invoke injunctive relief to enable a court to examine forthwith the basis of the agency's jurisdiction. The right to invoke equity's aid is dependent upon a positive showing that a failure to grant injunctive relief will result in irreparable harm. * * *" (cases cited) (Italics supplied.)

The court also stated, 240 Minn. 6, 60 N. W. 21:

> "Minnesota cases uniformly hold that administrative action *which has not reached a stage causing plaintiff irreparable injury* cannot be enjoined even though the anticipated decision of the administrative agency is questioned on constitutional grounds. Injunctive relief cannot be given for what is merely assumed to be a possible result." (cases cited) (Italics supplied.)

This case was decided on the basis of Minnesota law and upon the determination that the petitioner would not as a matter of law suffer irreparable injury for which there is no adequate remedy at law should the administrative proceedings continue. The state Supreme Court did not purport to decide this case on the issue of the sufficiency of the notice which the Commissioner sent to the petitioner advising the petitioner of the proposed hearing. The court

did not consider either implicitly or explicitly the federal question as being before it. *Osborne v. Clark*, 204 U. S. 565, 567-568. There is not in the majority opinion the implicit or explicit recognition of a federal question and a decision rendered thereon. *Minnesota v. National Tea Co.*, 309 U. S. 551, at 554. *Perkins v. Benguet Consolidated Mining Co.*, 342 U. S. 437, at 441-443. The Supreme Court will not review a judgment of a state court based on adequate and independent non-federal ground even though a federal question be involved and perhaps wrongly decided. *Murdock v. Memphis*, 20 Wall. 590, 636; *Berea College v. Kentucky*, 211 U. S. 45 at 53; *Fox Films Corporation v. Muller*, 296 U. S. 207, where the decision of the state board is based solely upon a non-federal ground, but the federal question was properly asserted, the Supreme Court will determine whether the non-federal ground independently and adequately supports the judgment. The failure of the state court to pass upon the federal question is not conclusive. Only if the non-federal ground is adequate will review be declined. *Wood v. Chesborough*, 228 U. S. 672, 676-680; *West Chicago Street Railway Co. v. Illinois ex. rel. Chicago*, 201 U. S. 506, 519-520; *Chicago B. & Q. R. R. Co. v. Illinois ex rel. Commissioners*, 200 U. S. 561, 580-581. We contend that the decision of the State Supreme Court is based solely on adequate non-federal grounds and that because of this this court should not assume jurisdiction.

The Commissioner's action is clearly valid on its face and it is obvious as a matter of law that the petitioner will have ample opportunity to be heard in the District Court on the question of jurisdiction and it can not be said that under these circumstances he will be faced with irreparable harm if the administrative proceedings con-

tinue. The petitioner's claim is one that could be argued in every instance where an administrative agency calls a hearing. Jurisdiction of the administrative body could under petitioner's contention always be contested in the courts on the ground that the adverse publicity and the cost of preparation for the hearing is an irreparable injury which the court should protect against. This argument would, of course, completely disrupt the entire administrative process and unduly burden the judicial system.

The rule that this court will not grant certiorari to review questions of fact is supported by the following cases:

Dower v. Richards, 151 U. S. 658;

Egan v. Hart, 165 U. S. 188;

Marshall Dental Mfg. Co. v. State of Iowa, 226 U. S. 460;

Illinois v. Economy Light & Power Co., 234 U. S. 497.

The cases cited by petitioner concerning the essential elements of due process may support the generalizations attributed to them. However, they are irrelevant to the question under consideration herein.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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